



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

September 19, 2018

To:

Hon. Richard A. Bates
Circuit Court Judge
Rock County Courthouse
51 S. Main St.
Janesville, WI 53545

Jacki Gackstatter
Clerk of Circuit Court
Rock County Courthouse
51 S. Main St.
Janesville, WI 53545

Patricia Sommer
Sommer Law Office, LLC
509 Nova Way
Madison, WI 53704

Gerald A. Urbik
Asst. District Attorney
51 S. Main St.
Janesville, WI 53545

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Lamardus Dewayne Ford 229420
Racine Corr. Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

You are hereby notified that the Court has entered the following opinion and order:

2018AP292-CRNM State of Wisconsin v. Lamardus Dewayne Ford (L.C. # 2008CF595)

Before Sherman, Blanchard, and Kloppenburg, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Attorney Patricia Sommer, appointed counsel for Lamardus Dewayne Ford, has filed a no-merit report seeking to withdraw as appellate counsel. *See Anders v. California*, 386 U.S. 738 (1967); WIS. STAT. RULE 809.32 (2015-16).¹ The no-merit report addresses whether there is

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

any arguable merit to challenging Ford's sentencing after revocation of his probation. Ford was sent a copy of the no-merit report but has not filed a response. Upon consideration of the report and an independent review of the record, we agree with counsel's assessment that there are no arguably meritorious appellate issues and summarily affirm. *See* WIS. STAT. RULE 809.21.

In 2008, Ford pled guilty to two felony drug crimes. The circuit court withheld sentence and ordered three years of probation on each crime, with the probation terms concurrent to one another but consecutive to prior prison sentences. In 2017, Ford's probation was revoked. As the sentence after revocation, the circuit court imposed consecutive sentences on the two drug crimes, each consisting of 18 months of initial confinement and 18 months of extended supervision.

Ford's appeal from sentencing following revocation does not bring the underlying conviction before us. *See State v. Drake*, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Additionally, the validity of the probation revocation is not before us. *See State ex rel. Flowers v. DHSS*, 81 Wis. 2d 376, 384, 260 N.W.2d 727 (1978) (probation revocation independent from underlying criminal action); *see also State ex rel. Johnson v. Cady*, 50 Wis. 2d 540, 550, 185 N.W.2d 306 (1971) (judicial review of probation revocation is by petition for certiorari in circuit court). The only potential issues at this point in the proceeding are those relating to sentencing after revocation.

The circuit court's duty at a sentencing after revocation is the same as its duty at the original sentencing. *State v. Wegner*, 2000 WI App 231, ¶7 n.1, 239 Wis. 2d 96, 619 N.W.2d 289. Our review of a sentence determination begins "with the presumption that the [circuit] court acted reasonably, and the defendant must show some unreasonable or unjustifiable basis in

the record for the sentence complained of.” *State v. Krueger*, 119 Wis. 2d 327, 336, 351 N.W.2d 738 (Ct. App. 1984).

We agree with counsel’s assessment in the no-merit report that there is no arguable merit to challenging the circuit court’s exercise of its sentencing discretion. The sentence was within the applicable range, and the circuit court expressly considered the facts relevant to the standard sentencing factors and objectives, including the gravity of Ford’s offenses, his character, and the need to protect the public. *See State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. The court reasonably considered Ford’s long-term pattern of criminal behavior as an important sentencing factor. Additionally, the court granted 308 days of sentence credit based on the stipulation of counsel, and the court determined that Ford was not eligible for the Challenge Incarceration Program or Earned Release Program. We discern no erroneous exercise of the court’s sentencing discretion.

Upon independent review of the record, we see no other arguable basis for reversing the judgment of conviction. We conclude that any further appellate proceedings would be wholly frivolous within the meaning of *Anders* and WIS. STAT. RULE 809.32.

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Patricia Sommer is relieved of any further representation of Lamardus Dewayne Ford in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals